



U.S. Department of Commerce  
National Oceanic and Atmospheric Administration



U.S. Environmental Protection Agency

Mr. Greg Aldrich, Acting Administrator  
Water Quality Division  
Oregon Department of Environmental Quality  
811 SW 6<sup>th</sup> Avenue  
Portland, OR 97204-1390

Dear Mr. Aldrich,

The Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA) have enclosed our initial assessment of Oregon's Implementation Ready (IR) TMDL approach for the Mid-Coast Basin and its ability to achieve and maintain water quality standards and enable Oregon Department of Environmental Quality (ODEQ) to satisfy the condition on its Coastal Nonpoint Pollution Control Program (or Coastal Nonpoint Program) for additional management measures for forestry. This letter responds to Paragraph 5 of the Final Settlement Agreement for Northwest Environmental Advocates v. Locke, et. al, Civil No. 09-0017-PK, in which EPA and NOAA agreed to provide the ODEQ with an initial written assessment by December 31, 2012, on:

- whether implementation of the Oregon Coastal TMDL approach (now referred to as the Implementation-Ready or IR-TMDL approach), in the Mid-Coast Basin, including safe-harbor best management practices (BMPs), is likely to result in actions that will achieve and maintain water quality standards (WQS); and
- whether ODEQ's plan for developing and updating TMDLs for all sub-basins in the Coastal Nonpoint Program management area using the IR-TMDL approach could satisfy the outstanding additional management measures for forestry condition on the State's Coastal Nonpoint Program.

When EPA and NOAA negotiated this milestone in the settlement agreement, we did so based on what ODEQ had committed to in its July 21, 2010, letter. Most importantly, ODEQ committed to completing the Mid-Coast IR-TMDLs, which would include specific safe-harbor BMPs, by June 30, 2012, as well as meeting other interim milestones, including providing examples of the safe-harbor BMPs and additional detail on how the IR-TMDLs would address landslide prone areas and road management concerns. However, ODEQ has not met these deadlines and has subsequently informed EPA and NOAA that the Mid-Coast IR-TMDLs will not be complete until June 30, 2013, or later.

EPA and NOAA recognize the complexities that Oregon faces in pursuing this new IR-TMDL approach and the extensive effort expended by ODEQ's staff and management to make this approach successful. ODEQ has held numerous stakeholder advisory and technical workgroup meetings and has analyzed and presented a significant amount of information to support development of temperature, sediment, and bacteria IR-TMDLs for the Mid-Coast sub-basin.

These steps are important groundwork for the development and issuance of BMPs needed to meet TMDL water quality targets and ultimately completing the Mid-Coast IR-TMDLs to satisfy the outstanding condition for additional management measures for forestry on Oregon's Coastal Nonpoint Program.

However, without completed Mid-Coast IR-TMDLs that include specific safe-harbor BMPs and a better understanding of how the IR-TMDL process will address riparian and landslide-prone area protection and forest road issues, EPA and NOAA do not have sufficient information to determine whether the IR-TMDL approach would: (1) enable Oregon to achieve and maintain applicable water quality standards, and (2) satisfy the additional management measures for forestry conditions in its Coastal Nonpoint Program. Based on what we have been presented to date, we have concerns regarding whether the current approach would enable the state to achieve those goals.

Most importantly, there has been limited progress on developing and identifying the specific BMPs which are key to meeting both water quality standards and the Coastal Nonpoint Program condition. In order to satisfy the additional management measures for forestry condition, Oregon must begin the analyses and stakeholder discussions about the BMPs needed to meet applicable water quality standards as soon as possible. Specifically, EPA and NOAA will need the following information:

- Additional detail on how ODEQ will determine the adequacy of the BMPs identified in the IR-TMDL process for meeting water quality standards;
- Additional detail on the approaches the state plans to take to address landslide prone areas and forestry roads;
- Examples of the safe-harbor BMPs Oregon would use to address:
  - protection of riparian areas, including for Type-N streams
  - protection of landslide-prone areas
  - management/maintenance of forestry roads; and
- Load allocations and surrogate targets.

The enclosed assessment document provides additional information, based on the information available, on what EPA and NOAA feel are positive aspects of the IR-TMDL process, current shortcomings, and what Oregon needs to do to satisfy its remaining additional management measures for forestry condition and achieve and maintain applicable water quality standards. We have also included feedback on Oregon's approach for satisfying the other two conditions on its Coastal Nonpoint Program related to new development and onsite sewage disposal systems.

According to the settlement agreement, EPA and NOAA must announce in the Federal Register our intent to fully approve or disapprove Oregon's Coastal Nonpoint Program by November 15, 2013. As we have shared with Oregon in the past, we must receive all information from Oregon explaining how the state believes it has satisfied the three remaining Coastal Nonpoint Program conditions by June 30, 2013, to meet this deadline. In addition, considering the time that has passed since EPA and NOAA last provided the state with interim decisions for other conditions on its program, we will need to work with the state to ensure that all rationales are as up-to-date as possible by June 2013 before we move forward with an announcement in the Federal Register. Given the time it is taking the state to address its outstanding conditions, EPA and NOAA are

very concerned that we will not be able to announce our intent to fully approve Oregon's program by November 15, 2013. If we must disapprove the state's program, the Coastal Zone Act Reauthorization Amendments requires NOAA and EPA to withhold 30 percent of Oregon's Coastal Zone Management Act Section 306 and Clean Water Act Section 319 funding.

EPA and NOAA do not want to see the state lose critical funding that supports water quality and habitat protection. Working with Oregon to achieve full approval of its Coastal Nonpoint Program is a priority for both agencies and we will continue to work closely with ODEQ to expeditiously move its IR-TMDL effort forward and to enable the state to meet the other remaining conditions on its Coastal Nonpoint Program.

Sincerely,

Margaret Davidson, Acting Director  
Office of Ocean and Coastal Resource  
Management  
National Oceanic and Atmospheric  
Administration

Daniel D. Opalski, Director  
Office of Water and Watersheds  
Environmental Protection Agency,  
Region 10

Enclosure

cc: Dick Pedersen, Director, ODEQ  
Gene Foster, Watershed Management Manager, ODEQ  
Patty Snow, Coastal Management Program Manager, DLCD  
Bill Blosser, Chair, OEQC  
Nina Bell, Northwest Environmental Advocates  
Paul A. Kampmeier, Washington Forest Law Center  
Allison LaPlante, Pacific Environmental Advocacy Center, Lewis and Clark Law School



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